THE LIMITS OF SOVEREIGNTY

Governments accused of violating human rights have often responded to international protests by invoking the principle of non-intervention in the internal affairs of a State.

This principle of international law does not condone external interference in essentially domestic matters. International and United Nations action seeking to protect human rights often has to stop when faced with this legal barrier.

But a shift in perceptions seems to be under way, suggesting that there may be limits to national sovereignty when human rights are grossly violated.

This shift is reflected in several statements of former United Nations Secretary-General Javier Pérez de Cuéllar—himself previously a professor of international law.

"It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity", Pérez de Cuéllar states in his 1991 annual report on the work of the Organization.

"The case for not impinging on the sovereignty, territorial integrity and political independence of States is by itself indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty... includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection."

The Secretary-General expanded on his reflections on the right to intervene in an April 1991 address at the University of Bordeaux. "It must first of all be recognized just how revolutionary an idea this is," he said. "Indeed, does it not call into question one of the cardinal principles of international law, one diametrically opposed to it, namely, the obligation of non-interference in the internal affairs of States?

"The latter principle is especially inviolable for the United Nations, for it is laid down at the very beginning of the Charter, Article 2, paragraph 7 of which states that 'nothing in [this] Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State....

"But one could—and I would even say should—inquire whether certain other texts that were later adopted by the United Nations, in particular the Universal Declaration of Human Rights, do not implicitly call into question this inviolable notion of sovereignty.

"Has not a balance been established between the rights of States, as confirmed by the Charter, and the rights of the individual, as confirmed by the Universal Declaration? We are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents.

"We must now ponder this issue in a manner that is at once prudent and bold. In a prudent manner, because the principles of sovereignty cannot be radically challenged without international chaos quickly ensuing. In a bold manner, because we have probably reached a stage in the ethical and psychological evolution of Western civilization in which the massive and deliberate violations of human rights will no longer be tolerated."

SPELLING OUT RULES

In his 1991 report on the work of the United Nations, Pérez de Cuéllar spelled out detailed rules for applying the right to intervene.

"First... the principle of protection of human rights cannot be invoked in a particular situation and disregarded in a similar one. To apply it selectively is to debase it.

"Second, any international action for protecting human rights must be based on a decision taken in accordance with the Charter of the United Nations.

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"Third... the consideration of proportionality is of the utmost importance.... Should the scale or manner of international action be out of proportion to the wrong that is reported to have been committed, it is bound to evoke a vehement reaction, which in the long run would jeopardize the very rights that were sought to be defended."

DUTY OF INTERVENTION

The right to intervene was widely debated at the 1991 UN General Assembly.

The duty of humanitarian assistance, applied in the case of the Kurds during the Gulf War, led inevitably to rethinking the concept of non-interference in the internal affairs of countries, Luxembourg's Foreign Minister, Jacques Poos, told the Assembly in September 1991. The emergence of a new concept—the "duty of democratic intervention"—was seen to be along the same lines.

In the aftermath of the Gulf War, the right to intervene for humanitarian ends and the protection of human rights is gaining ground, Italy's Foreign Minister, Gianni de Michelis, said. "Intervention that is primarily aimed at securing protection of human rights and respect for the basic principles of peaceful coexistence is a prerogative of the international community, which must have the power to suspend sovereignty whenever it is exercised in a criminal manner."

For Hungary's Prime Minister, Jozsef Antall, violations of human rights and the rights of minorities could not be considered the exclusive internal affairs of a country. It is regrettable that the principle by which the United Nations proceeds in ensuring respect for human rights has not yet gained universal acceptance, he added.

The UN Secretary-General had fully reflected the Chilean view, Chile's Foreign Minister, Enrique Silva Cimma, told the Assembly, when he stated that the principle of non-interference could not be regarded as a protective barrier behind which human rights could be violated with impunity. To admit that false argument would betray the hopes of those who were victims of totalitarian systems and powerless to defend themselves, he said. "It is to them, and not to their persecutors, that we owe our loyalty."

The Soviet Union and the United States also supported the right to intervene. Thomas R. Pickering of the United States in November 1991 told the Assembly's Third Committee (Social, Humanitarian and Cultural) that States have the primary responsibility for human rights within their territory. When States fail to meet their responsibility, however, the international community has the duty to help.

Boris A. Tsepov of the Soviet Union told the Third Committee that the approach of non-intervention in the internal affairs of States precludes international cooperation on human rights. Such cooperation does not threaten the sovereignty of States, he said; it seeks to resolve cases of rights abuses.

SECURITY COUNCIL INTERVENTION

Belgium and Austria made the most wide-ranging proposals. A consensus is growing, Belgium's State Secretary, Paul De Keersmaeker, told the Assembly, that "States are liable internationally for their national policies on human rights.

"True exercise of State sovereignty consists not of resisting any external interference... but rather of mobilizing all means available to States to ensure respect for human rights," he said. "Each State has this obligation not only to its own citizens... but also with regard to other States.... Actions by third States to protect human rights should not necessarily constitute an interference in domestic affairs."

Article 56 of the UN Charter implies the possibility of interference of this kind, he said. Each Member State has committed itself to act in defence of the principles set forth in Article 55, including the protection of human rights. All States and the international community are obliged not only to respect human rights but also to have them respected.

"Using confidential procedures, direct and indirect pressure and diplomatic intervention, third States and the international community can bring about a change of attitude by a State violating human rights," he said.

States could use existing unilateral means of exerting pressure, such as reviewing their economic, political and diplomatic relations with another State on whose territory human rights are systematically violated, he observed.

The powers of the UN Commission on Human Rights could be reviewed to allow for transmitting the files of the worst cases of human rights violations to the Security Council, he added. If the Commission found that a State had systematically violated certain human rights, the State would be given a short period to put the matter right. If the State did not comply, the facts would be conveyed to the Security Council for consideration.

THE "WHITE HELMETS"

In the view of Austria's Foreign Minister, Alois Mock, human rights and fundamental freedoms have now been accepted as central principles in the evolution of nations. Within the Conference on Security and Cooperation in Europe it had been established that interest shown in safeguarding human rights could not be rejected as interfering in the internal affairs of another country—a principle that should be applied on a universal level as well.

"Concerns over human rights violations and inquiries with a view to safeguarding these rights cannot be considered interference," he said. "On the contrary, expressing concern in the area of human rights constitutes an important and legitimate element of international dialogue."

Article 1, paragraph 3, in conjunction with Articles 55 and 56 of the UN Charter, obliges the United Nations to watch over human rights around the world. The UN practice of intervening in cases of serious human rights violations corroborated that view, he said.

Mock proposed that the Commission on Human Rights adopt an emergency procedure based on a permanent register of experts, who could be called the "white helmets", and be placed at the Commission's disposition. Upon receipt of information on gross human rights violations, a team of "white helmets" could be dispatched by the Commission into the country to examine the situation. The team would submit a report with recommendations to initiate speedy action on the basis of existing mechanisms. That report, along with the comments of the Government concerned, would be placed on the agenda of the Commission, which would decide on follow-up measures.

GOVERNMENTS' RESPONSIBILITY

In the General Assembly, some States expressed disagreement at what they considered an erosion of the principle of non-intervention.

Small and weak States are seriously concerned by the "moralistic stances" of some who attempt to modify the time-honoured concept of sovereignty and erode the Charter's cardinal principle of non-interference, Myanmar's Foreign Minister, U Ohn Gyaw, told the Assembly. That is becoming increasingly evident in the promotion of human rights.

"A clear line must be drawn between internationally binding human rights norms and the modality of their implementation, which is the primary responsibility of the Member State," he said. The United Nations could best play a supportive role in that regard.

"Basic human rights and fundamental freedoms are unquestionably of universal validity," Indonesia's Foreign Minister, Ali Alatas, told the Assembly. "However, it is also commonly agreed that their implementation in the national context should remain the competence and responsibility of each Government, while taking into account the complex variety of problems, of diverse value systems and of different economic, social and cultural realities prevailing in each country.

"This national competence not only derives from the principle of sovereignty, but is also a logical consequence of the inherent right of nations to their national and cultural identity and to determine their own social and economic systems," he added.

Without respect for the principle of sovereignty, the realization of human rights would be elusive, China's Jin Yongjian told the Third Committee in November 1991. China, he said, can remember the humiliating experience of colonialism, and for that reason it is greatly concerned with securing its

sovereignty. Large-scale rights violations caused by such evils as colonialism must be addressed by the international community; but the issue of human rights must not serve as a pretext for imposing a given country's political or ideological agenda on another country, he said.

Other countries expressed their views in the Third Committee. For instance, Australia, Bulgaria and Japan spoke in favour of the right to intervene, while India and Uganda spoke against it. Many countries have yet to state their position.

The debate goes on, within and outside the United Nations. Ultimately, as Pérez de Cuéllar said, it falls to legal experts, political theoreticians and Governments "to forge a new concept—one which marries law and morality".

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